

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MASHA ALLEN, : CIVIL ACTION NO. 08-4614  
Plaintiff :  
v. :  
Camden, New Jersey  
FAMILIES THRU INTERNATIONAL : September 30, 2009  
ADOPTION, et al, : 9:39 o'clock a.m.  
Defendant :  
.

TELEPHONE CONFERENCE  
BEFORE THE HONORABLE ANN MARIE DONIO  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Plaintiff: ROBERT N. HUNN, ESQUIRE  
Kolsby, Gordon, Robin &  
Shore, Esquires  
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THOMAS VECCHIO, ESQUIRE  
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Cherry Hill, NJ 08002

DARREN SUMMERTON, ESQUIRE  
The Bird Law Group  
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Atlanta, GA 30318

For the Defendant  
FTIA: DONALD C. COFSKY, ESQUIRE  
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APPEARANCES:

For the Defendant  
Smith:

JEANNENE SMITH, Pro Se  
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For the Defendant  
Adagio Health:

BRAD WEINTRAUB, ESQUIRE  
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3 THE COURT: Good morning, this is Judge Donio. We  
4 are on the record, a telephone record on Case Number 08-4614.  
5 May I have the appearances for the record, please?

6 MR. HUNN: Good morning, your Honor, Robert Hunn.

7 MR. SUMMERSVILLE: Good morning, your Honor, this is  
8 Darren Summerville, on behalf of the plaintiff, pending a pro  
9 hac application.

10 MR. MANERI: Good morning, your Honor, Frank Maneri,  
11 of Dilworth Paxson, on behalf of the plaintiffs.

12 MR. VECCHIO: Good morning, your Honor. Tom Vecchio  
13 of Dilworth Paxson on behalf of the plaintiff.

14 THE COURT: I'm sorry, Mr. Vecchio?

15 MR. VECCHIO: Yes.

16 MR. COFSKY: Donald Cofsky, representing Families  
17 Thru International Adoption.

18 MR. WEINTRAUB: Good morning, your Honor, Brad  
19 Weintraub from Weiner Lesniak, for the third party defendant,  
20 Adagio Health.

21                   THE COURT: And as I understand from the parties,  
22 there is no appearance, at this time, for the pro se  
23 defendant, Ms. Smith.

24 MR. HUNN: Your Honor, we have been trying to call  
25 her. We had a couple of numbers, actually. My secretary may

1 have just gotten through to her right now. So, she may be  
2 calling in.

3 THE COURT: Again, let me put you on hold for a  
4 second. Is this an AT&T or other service number that someone  
5 calls in to be connected?

6 MR. HUNN: Yes, your Honor.

7 THE COURT: All right, let me put you on hold for a  
8 few moments and then we'll check back, okay.

9 (Pause.)

10 THE COURT: All right, we're back on the electronic  
11 record. This conference is being electronically recorded and  
12 I would ask that each time you speak, you state your name for  
13 the record.

14 This is a telephone conference in Case Number  
15 08-4614. We began by noting the appearances and apparently,  
16 Ms. Smith was on the phone and is now on the phone. So,  
17 let's place the appearances again, for the record, beginning  
18 with plaintiff's counsel.

19 MR. HUNN: Yes, your Honor, it's Robert Hunn for the  
20 plaintiff.

21 MR. SUMMERSVILLE: Also for the plaintiffs, Darren  
22 Summerville.

23 MR. MANERI: Also for the plaintiffs, Frank Maneri  
24 of Dilworth Paxson.

25 MR. VECCHIO: Also for the plaintiffs, Tom Vecchio

1 of Dilworth Paxson.

2 MR. COFSKY: Donald Cofsky for Families Thru  
3 International Adoption.

4 MR. WEINTRAUB: Brad Weintraub, your Honor, for the  
5 third party defendants, Adagio Health.

6 MS SMITH: Jeannene Smith, pro se.

7 THE COURT: Okay. That's everyone, at this point.  
8 Let me address the first issue I want to address with counsel  
9 and Ms. Smith and that's the notice of the motion for the pro  
10 hac admission of Mr. Bird and Mr. Summerville. I understand  
11 that there's been consent of all parties, other than Ms.  
12 Smith. Ms. Smith, I'm not sure if you've consented or  
13 whether you oppose the motion.

14 MS SMITH: It's accepted, I should say.

15 THE COURT: It's accepted. All right, the  
16 applications of the pro hac attorneys are in order. I just  
17 need a certification from one of the local counsel. Is that  
18 going to be Mr. Maneri or Mr. Vecchio?

19 MR. MANERI: Yes, your Honor.

20 THE COURT: All right, can you provide a  
21 certification to the Court that they will be serving as the  
22 local counsel in this case and then we will be able to enter  
23 the order granting the motion.

24 MR. MANERI: Certainly.

25 THE COURT: Mr. Hunn, are you remaining in the case?

1                   MR. HUNN: I am not, your Honor. My motion to  
2 withdraw, as you recall, was withdrawn pending the filing of  
3 this motion. Now, with it being filed and granted, would the  
4 Court like me to file anything in addition to note my removal  
5 from the case?

6                   THE COURT: Well, I haven't granted the motion for  
7 pro hac, because the order has to be entered. But assuming  
8 that the certification from Dilworth counsel is appropriate  
9 and the other certifications are appropriate and consistent  
10 with the local rules, you will need to indicate a withdrawal  
11 of your appearance on the record, in some fashion and you can  
12 check the local rules on how to do that, okay?

13                  MR. HUNN: That's fine, your Honor.

14                  THE COURT: All right, now, the issue of the  
15 plaintiff's counsel representation has been sorted out and  
16 resolved, let's move forward then with where we are in the  
17 case concerning discovery of this matter. Who would like to  
18 address that on behalf of plaintiffs?

19                  MR. SUMMERSVILLE: Your Honor, this is Darren  
20 Summerville of the Bird Law Group. As you know, we have  
21 consulted with the Dilworth firm and have a litigation plan  
22 sort of set out. And as soon as the pro hac order is finally  
23 entered, we, of course, will reach out to the remainder of  
24 counsel, under the local rules, to go ahead with these  
25 initial consultations on the disclosures.

1                   THE COURT: Have Rule 26 disclosures been done in  
2 the case, at all?

3                   MR. SUMMERSVILLE: They have not.

4                   THE COURT: How about from the defense, Mr. Cofsky?

5                   MR. COFSKY: I have a packet here. I have not known  
6 who to send it to.

7                   THE COURT: All right, so, you're ready to send  
8 yours out, because the --

9                   MR. COFSKY: Yes.

10                  THE COURT: -- previous scheduling order I had some  
11 time ago, was for Rule 26 disclosures to be done on or before  
12 6/15 and then the issue came to, I guess, with this counsel  
13 issue.

14                  MR. WEINTRAUB: Your Honor, Brad Weintraub from  
15 Weiner Lesniak, for Adagio, we served initial disclosures on  
16 all counsel back in June, I believe.

17                  THE COURT: So, you've done yours.

18                  MR. WEINTRAUB: Yes, I sent it to Mr. Hunn and  
19 everyone else.

20                  MR. HUNN: This is Robert Hunn, I sent those  
21 disclosures to everyone on behalf of the plaintiff.

22                  THE COURT: All right, how about Ms. Smith, have you  
23 done your Rule 26 disclosures?

24                  MS SMITH: I am not sure.

25                  THE COURT: All right, here's what I'm going to do.

1       Everybody go back and review their files. To the extent you  
2 haven't done your Rule 26 disclosures, let's get them done by  
3 October 2nd. All right.

4                  Now, has any written discovery been served by any  
5 parties?

6                  MR. COFSKY: Cofsky, I'm not aware of any.

7                  MR. HUNN: No, your Honor, this is Robert Hunn.

8                  THE COURT: All right and I take it then, no  
9 depositions have been conducted to date?

10                 MR. HUNN: That's correct, your Honor, Robert Hunn.

11                 THE COURT: Okay. What we will do then, is set out  
12 a schedule. Let's have you begin your written discovery  
13 requests and responses and begin discussing when and how many  
14 depositions you're going to be taking. It seemed to me that,  
15 in light of the fact that tomorrow is October 1st, we should  
16 be able to get the fact discovery done by the end of  
17 February. Is that date acceptable to all parties?

18                 MR. SUMMERSVILLE: I believe that's attainable, your  
19 Honor. This is Darren Summerville.

20                 MS SMITH: Your Honor, I'm at a disadvantage.  
21 Unfortunately, I am not with Reaching Out. I have left prior  
22 to this case beginning and they have all the corporate  
23 documents and files that came from our case. So, you know, I  
24 may need to tell them -- to testify, your Honor. Reaching  
25 Out and Child Promise has chosen not to answer or respond in

1       this case and therefore, I am placed in this disadvantage and  
2       I (inaudible).

3                  THE COURT: Well, if there's any application you  
4 believe is warranted under the Federal Rules of Civil  
5 Procedure, you can make that application and you can review  
6 the Federal Rules of Civil Procedure with respect to the  
7 service of discovery, including third party discovery. I am  
8 going to set a date of February 26, 2010 for the completion  
9 of fact discovery. If anybody has an issue with reaching  
10 that date, they'll need to make an application to the Court  
11 prior to the expiration of that date, setting forth what  
12 efforts have been done to date, to complete discovery and why  
13 any additional time may be necessary.

14                  Let me direct this, first, to the plaintiff's  
15 counsel. Are there any amendments to the pleadings  
16 contemplated or any request to add additional parties?

17                  MR. SUMMERSVILLE: This is Darren Summerville, in  
18 terms of adding new parties, we do not -- we are not aware of  
19 parties we wish to add, at this time. There is some question  
20 as to the third party defendant, Adagio Health, which  
21 hopefully, has not brought directed claims against that  
22 defendant yet and are still considering the discovery.

23                  THE COURT: All right, now, this is directed to each  
24 defendant and/or third party defendant, do any of the  
25 defendants or third party defendant anticipate adding new

1 parties or amending the pleadings?

2 MR. COFSKY: Don Cofsky, I have none, at this time.

3 MS SMITH: Ms. Smith?

4 MR. WEINTRAUB: Your Honor, we have not contemplated  
5 that.

6 THE COURT: Could you just state your name when you  
7 speak, please?

8 MR. WEINTRAUB: Yeah, Brad Weintraub.

9 THE COURT: Okay and now, Ms. Smith?

10 MS SMITH: I have not, not that I'm aware of.

11 THE COURT: All right, any motions to amend or to  
12 add new parties, may be filed sooner, but no later than  
13 December 31st.

14 Now, is the plaintiff anticipating utilizing expert  
15 reports?

16 MR. SUMMERVILLE: We will, Darren Summerville, we  
17 will, your Honor.

18 THE COURT: And what type of experts?

19 MR. SUMMERVILLE: As we see the case, right now, it  
20 is a matter of what standards were involved with the  
21 international adoption back at the time of Masha Allen's  
22 adoption, in terms of what pre and post-placement studies and  
23 observations should have been done.

24 THE COURT: All right, so, on liability?

25 MR. SUMMERVILLE: That's correct.

1                   THE COURT: Any damage experts?

2                   MR. SUMMERSVILLE: We do not now if it will be an  
3 actual expert in the sense of a hired expert versus one of  
4 Masha Allen or several of Masha Allen's treating  
5 psychiatrists' position.

6                   THE COURT: And I will put a date, at this time, for  
7 the service of any expert reports, affirmative expert  
8 reports, no later than February, I'm sorry, March 31, 2010.  
9 Any rebuttal, April 30, 2010 and expert deps to be completed  
10 by May 31, 2010. Are those dates acceptable to the parties?

11                  MR. COFSKY: Initially, yes, your Honor. This is  
12 Cofsky. Depending on the expert reports, if I receive them  
13 by the 3st of March, whether that 30 days would be an  
14 adequate time for my expert or experts to review and respond.  
15 But for now, that will be fine. If there's an issue, we'll  
16 contact the Court.

17                  THE COURT: All right, does anyone object to that  
18 schedule?

19                  MR. WEINTRAUB: Your Honor, Brad Weintraub, I agree  
20 with Mr. Cofsky. I don't necessarily object to it. I may  
21 need more time, as well, 30 days might not be enough in a  
22 case like this, but we could address that down the road.

23                  MR. SUMMERSVILLE: On behalf of the plaintiff, Darren  
24 Summerville, those dates are acceptable to us, your Honor.

25                  THE COURT: Ms. Smith?

1 MS SMITH: They're acceptable, as far as I know,  
2 yes.

3 THE COURT: All right. Any further dispositive  
4 motions, they can be filed sooner, but no later than June 30,  
5 2010 and we will pre-try this case in the month of July and  
6 early August. The dates for the pre-trial submissions will  
7 be set forth in my written order.

8 Now, this is again directed to plaintiff's counsel,  
9 have you provided medical authorizations for the treating  
10 doctors' medical records?

11 MR. SUMMERSVILLE: I do not believe that's been done,  
12 your Honor.

13 THE COURT: Are we having any issue in that regard  
14 or did the parties anticipate working that issue out?

15 MR. SUMMERSVILLE: I suspect we can reach some  
16 agreement, certainly.

17 THE COURT: All right, are there any other issues on  
18 discovery, at this time?

19 MR. SUMMERSVILLE: Darren Summerville, for the  
20 plaintiff, none that I'm aware of.

21 MR. COFSKY: Cofsky, here. None, your Honor, but  
22 one question which might expedite matters pursuant to Ms.  
23 Smith's concern about inability to get files. I know in New  
24 Jersey, when an agency goes out of business, the files are  
25 required to be taken over and stored by another agency. She

1 may who that agency is. That would help us in getting those  
2 files.

3 MS SMITH: Unfortunately, they were never able to  
4 locate an agency and they have -- they sent them to public  
5 storage somewhere.

6 THE COURT: All right, Mr. Cofsky.

7 MS SMITH: We tried sending them to the State of New  
8 Jersey and the State of New Jersey rejected them and sent  
9 them back.

10 THE COURT: Anything further, Mr. Cofsky?

11 MR. COFSKY: No, that's it, your Honor.

12 THE COURT: All right, now, before we finish this  
13 scheduling conference, I want to address with the parties,  
14 whether there's any issue or has there been any discussion  
15 about electronic discovery, e-mails and the discovery of  
16 digital information? What's the plaintiff's position?

17 MR. SUMMERTON: Your Honor, I am unaware of  
18 whether or not those discussions took place as part of the  
19 initial collaboration on the case. But we would be prepared  
20 to do that in the very near term, if they have not been done.

21 THE COURT: How about defense counsel?

22 MR. COFSKY: There's been no, that's not been  
23 addressed, at all, your Honor.

24 THE COURT: All right. Now, what I'm going to  
25 request that the parties meet and confer pursuant to our

1 local rules and that the plaintiffs send me a letter by  
2 October 16th that that meet and confer has been done and  
3 address whether and if so, what are any electronic discovery  
4 issues. Okay?

5 MR. SUMMERSVILLE: Of course.

6 THE COURT: Now, the stay of discovery is lifted and  
7 the new scheduling order will be set forth and will be placed  
8 on the docket. And the remaining item for the Court will be  
9 to schedule a status telephone conference, to see where the  
10 parties are in this discovery phase, on how they are  
11 proceeding. And we will have that status conference on a  
12 date and time that will be set in my order for a date in  
13 early January. If there's any need to have a conference  
14 earlier than that, the parties may submit a letter request  
15 for a telephone conference. And to the extent there are any  
16 discovery disputes, the Court will remind counsel and the pro  
17 se defendant, to take a close look at Local Rule 37. And the  
18 obligations to meet and confer and attempt to resolve any  
19 discovery disputes prior to application to the Court. And  
20 then the requirement that they have a conference call with  
21 the Magistrate Judge before a motion on discovery issues.

22 All right, is there anything further we need to  
23 address today, from the plaintiff's counsel?

24 MR. SUMMERSVILLE: No, your Honor, I don't think  
25 there is. This is Darren Summerville.

1 THE COURT: All right and from each defendant, if  
2 they could state their name and indicate whether there is  
3 anything further?

4 MR. COFSKY: Cofsky, here, no, your Honor.

5 MR. WEINTRAUB: Brad Weintraub, your Honor, nothing.

6 MS SMITH: Jeannene Smith, nothing.

7                 THE COURT: All right. Counsel and Ms. Smith, this  
8 order, scheduling order will be placed on the docket. I will  
9 request that plaintiff set up the next call and having  
10 nothing further to address, you all have a nice day, we are  
11 adjourned.

12 (Proceeding adjourned 9:57 o'clock a.m.)

13 \* \* \*

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

s:/Geraldine C. Laws, CET  
Laws Transcription Service

Dated 9/16/10